

109 FERC ¶ 61,194
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

North Hartland, LLC

Project No. 2816-031

ORDER DENYING EXTENSION OF TIME, RESCINDING ORDER
APPROVING TRANSFER OF LICENSE, AND DISMISSING APPLICATION

(Issued November 22, 2004)

1. North Hartland, LLC has filed a tenth request for an extension of time to comply with the conditions applicable to the transfer to it of the license for the North Hartland Hydroelectric Project No. 2816, located on the Ottauquechee River, in Windsor County, Vermont. As discussed below, we deny the extension, rescind the order approving transfer of the license, and dismiss the transfer application. This order is in the public interest because it is consistent with the orderly processing and conclusion of Commission proceedings.

Background

2. In 1981, the Commission issued to Vermont Electric Cooperative, Inc., a license for the 4.0-megawatt North Hartland Project, located at the U.S. Army Corps of Engineers' North Hartland Dam.¹ In 1983, the project license was transferred to Vermont Electric Generation & Transmission Cooperative, Inc. (VEGT), an off-shoot of the original licensee, in order to facilitate financing of the project by the U.S. Department of Agriculture's Rural Utilities Service (RUS).²

3. In April 1996, VEGT filed for Chapter 7 bankruptcy, and in June 1996, the project ceased operations.³ In June 1997, the bankruptcy court approved a stipulated settlement

¹ 17 FERC ¶ 62,307.

² See 23 FERC ¶ 61,174.

³ See 91 FERC ¶ 62,227.

of claims under which the RUS, the principal secured creditor, was authorized to negotiate the terms of a transfer of the project, and the court-appointed trustee of the bankruptcy estate agreed to retain title to the project and to cooperate in any transfer.⁴

4. On February 17, 2000, under a deal negotiated by RUS, VEGT, by and through the trustee, filed with the Commission a joint application with North Hartland, for approval of the transfer of the project license to North Hartland.

5. On June 27, 2000, Commission staff issued an order approving the transfer.⁵ Ordering paragraph (C) included a standard provision, stating that the transfer was contingent on transfer of the property under license, and that North Hartland must accept the conditions of the transfer, and must file with the Commission within 60 days, that is, by August 28, 2000, certified copies of instruments of conveyance to it of project property.

6. On August 25, 2000, North Hartland filed a request for an extension of time to comply with the conditions of the transfer, stating that it needed more time to obtain Vermont regulatory approvals for the transfer of the project. By unpublished letter order dated October 13, 2000, Commission staff granted an extension, until December 26, 2000.

7. On December 18, 2000, North Hartland filed a second request for an extension of time to file the conveyance documents, stating that circumstances beyond its control had prevented it from obtaining the necessary approvals. On January 11, 2001, Commission staff granted the extension, until June 26, 2001 (unpublished order).

8. On October 1, 2001, North Hartland requested a third extension to submit the conveyance documents, again on the basis of its inability to obtain state approvals. On October 10, 2001, Commission staff granted the requested extension, until March 26, 2002 (unpublished order).

9. On April 2, 2002, North Hartland filed a fourth request for an extension, asserting that delays caused by Vermont regulators and by Central Vermont Public Service Corporation (Central Vermont), with whose system North Hartland proposed to interconnect and to whom North Hartland proposed to sell power, had prevented completion of the transfer. By unpublished order dated April 11, 2002, staff granted an extension, until September 26, 2002.

⁴ *Id.*

⁵ *Id.*

10. North Hartland filed a fifth extension request on September 23, 2002. North Hartland stated that transfer of title had been delayed because of the failure of Vermont regulators to act on the transferee's request for consent to sell and transfer the project. On October 18, 2002, staff granted the requested extension, until March 26, 2003 (unpublished order).

11. On March 10, 2003, North Hartland filed a sixth extension request, stating that it could not move forward until it had settled its disagreements with state regulators as to its regulatory status. On March 24, 2003, staff granted an extension, until September 26, 2003 (unpublished order).

12. On June 23, 2003, North Hartland filed a seventh request for extension, asserting that the transferor could not: (1) deliver title to the project free of encumbrances, (2) certify that it had complied with all license conditions, or (3) certify that it had satisfied all of its liabilities and obligations under the license as of the transfer date.⁶

13. On July 28, 2003, the Commission issued an order amending the project license, at North Hartland's request, to include a seven-mile-long primary transmission line. With respect to the length of the transfer proceedings, the Commission stated that ". . . any further requests to extend the deadline [for filing conveyance documents] will be carefully reviewed to determine whether there remain legal impediments to transfer of property title, or whether North Hartland seeks further extensions while it pursues modification or reversal of conditions applicable to authorizations to obtain the project property or of contractual issues involving transmission and sale of project power."⁷

14. Staff issued an unpublished order on July 29, 2003, this time extending the deadline until March 26, 2004. Staff noted the Commission's statement about further extensions, cited North Hartland's assertions concerning its efforts to obtain project property, and stated that "North Hartland should support any additional extension requests with evidence showing its pursuit of title to project property, and a description of any legal impediments to its obtaining such title."

15. On February 24, 2004, North Hartland filed an eighth request for extension. North Hartland stated that had all of the financing necessary to complete the sale, but that the banks were unwilling to disburse funds until the Commission and the Vermont Public

⁶ On July 16, 2003, RUS filed a response stating that North Hartland had in its filing incorrectly identified RUS, as opposed to the bankruptcy trustee, as the transferor.

⁷ 104 FERC ¶ 61,151 at n.32.

Service Commission (Vermont PSC) had approved an interconnection agreement between North Hartland and Central Vermont.⁸

16. On March 8, 2004, Central Vermont filed a response to the extension request. The corporation stated that it prepared an interconnection agreement which North Hartland refused to sign, and that thus it was North Hartland that was responsible for any delay in resolving the matter. Central Vermont stated that it had incurred significant costs responding to North Hartland's pleadings before the Commission and the Vermont PSC, and urged the Commission to require adherence to previous deadlines and bring the matter to a conclusion.

17. On March 12, 2004, the Commission issued an order accepting as summarily modified an unexecuted interconnection agreement filed by Central Vermont, between itself and North Hartland. In addition, the Commission summarily modified provisions of Central Vermont's open access transmission tariff relating to the use of certain interconnection facilities.⁹

18. On March 18, 2004, Commission staff granted an eighth extension, until June 26, 2004 (unpublished order). Again noting the statements in the July 28, 2003, order, staff concluded that "[t]here is no legal impediment to North Hartland buying the project now," but nevertheless granted the extension to give North Hartland more time to obtain state approval of the interconnection agreement.

19. North Hartland requested a ninth extension on June 21, 2004, "until the Vermont Public Service Board approves the Commission ordered [interconnection agreement]." Staff granted this request as well, by unpublished order of June 22, 2004, extending the deadline until September 26, 2004.¹⁰ Staff again noted that there was no legal impediment to North Hartland buying the project, but again granted the extension to allow more time for North Hartland to obtain state approval of the interconnection agreement.

20. On July 21, 2004, the Town of Hartland, Vermont, filed a letter supporting a request for rehearing by Vermont Department of Public Service (Vermont DPS)

⁸ North Hartland reiterated its request for an extension in additional filings of March 8, 2004, and March 16, 2004.

⁹ See *Central Vermont Public Service Corporation*, 106 FERC ¶ 61,247. These proceedings are ongoing. Given our action here, however, we are concurrently dismissing those proceedings as moot.

¹⁰ North Hartland filed an additional extension request on June 1, 2004.

challenging the June 22, 2004, extension order. The town stated that it had failed to get North Hartland to pay delinquent taxes over a six-year period, and that, while it was eager to see the North Hartland Project operate, electric customers have been short-changed, and the town had lost significant tax revenues, as a result of the plant being idle. The town asked the Commission not to grant any further extensions.¹¹

21. On July 26, 2004, North Hartland filed a response disputing the town's contentions and asking that the pleading be rejected.

22. On September 21, 2004, North Hartland filed a request for a tenth extension, for a time period not to exceed 12 months, until the following events occur: (1) Vermont approves the interconnection agreement, (2) the seller obtains authority to legally transfer the project, and (3) the seller removes encumbrances to the title "or as otherwise agreed." North Hartland asserts that it has done everything within its power to consummate the transfer. It asserts that various matters beyond its control prevent completion of the transfer, including the federal government's lack of title to the project, the seller's refusal to seek authority from the bankruptcy court to transfer the project, and the lack of Vermont regulatory approval of the unexecuted interconnection agreement.

23. On September 23, 2004, Central Vermont filed a motion to intervene and comments. Central Vermont expresses the belief that North Hartland has no ability to conduct business in Vermont and that it has been involuntarily dissolved as a limited liability company by the State of New Hampshire. The utility also notes that, as of the Commission's March 12, 2004, order, there is now a valid interconnection agreement between it and North Hartland, and that it is North Hartland's responsibility, and not Central Vermont's, to obtain state approval of the agreement.

24. On September 24, 2004, RUS filed comments correcting what it asserts are misstatements in North Hartland's extension request. RUS asserts that the bankruptcy trustee has stated that he is prepared to transfer title to the project upon the fulfillment by North Hartland of the conditions to the asset purchase agreement. RUS explains that, contrary to the terms of the purchase agreement, which requires a payment of \$1.4 million in cash at closing, North Hartland has offered to post a conditional letter of credit in a significantly lower amount, which could not be drawn until some indefinite date when the project dispatches electricity. RUS states that it has no obligation to remove encumbrances on the project, which either were in existence and were agreed to by North Hartland when it signed the asset purchase agreement, or which (like the local tax liability and past charges owed to Central Vermont) North Hartland has agreed to satisfy. RUS also questions North Hartland's assertion that it has financing commitments to

¹¹ See letter to Magalie Roman Salas from Robert H. Stacey (Hartland town manager).

acquire the project. RUS concludes that “North Hartland’s alleged inability to close is primarily due to circumstances within its control.” RUS opposes a year-long extension, but states that it does not oppose a 45-day extension “to permit North Hartland a final opportunity to demonstrate that it has the intention and ability to honor the terms of the [asset purchase agreement].”¹²

25. Also on September 24, 2004, Vermont DPS filed a motion to intervene and answer opposing North Hartland’s extension request. Similarly to Central Vermont, Vermont DPS asserts that it is North Hartland’s responsibility, and not Central Vermont’s, to seek Vermont DPS’s approval of the interconnection agreement. Vermont DPS states that North Hartland has never made a proper filing requesting such approval, and that its assertion to the contrary is not accurate.¹³ Vermont DPS also avers that, if North Hartland’s recitation of the various problems with respect to its dealings with bankruptcy trustee and RUS is true, it seriously calls into question North Hartland’s ability to consummate the sales transaction, and whether it is in the public interest to allow North Hartland to continue to seek to obtain title to the project.¹⁴ Vermont DPS repeats the questions raised by other commenters with respect to North Hartland’s status as a legal entity.

26. On the same date, Essex Power Services, Inc. filed a pleading with respect to North Hartland. Essex appended to its filing a November 1, 2002, letter to North Hartland from Mark Connolly (Deputy New Hampshire Secretary of State), stating that North Hartland, LLC had been dissolved, as of that date, for the failure to file required reports and pay fees. Essex also stated that it has reserved the rights to the North Hartland name in Vermont and New Hampshire, and has served Mr. Carey with a cease and desist order to prevent him from doing business under that name in those states.

27. On September 29, 2004, North Hartland filed a response to the various pleadings opposing the extension. North Hartland accuses Vermont DPS, Central Vermont, RUS, and Essex of collaboration in “quiet conversations behind closed doors that is not helpful, and possibly is illegal,” and disputes their factual contentions. It asks the Commission to deny the motions to intervene, and to dismiss the four pleadings with prejudice.

¹² The 45-day period proposed by RUS expired on November 8, with nothing occurring to indicate that the project sale will be consummated.

¹³ Vermont DPS refers to its orders requiring North Hartland to appear before it only through counsel, and North Hartland’s assurances that it would do so, which Vermont DPS states has not occurred. *See* Vermont DPS motion to intervene and protest at 6-7.

¹⁴ *Id.* at 7-9.

28. North Hartland states that issues with respect to company registrations and other corporate transactions are “matters reserved unto the States, not matters germane to the Commission Administrative Action for an extension of time.”¹⁵ It nonetheless asserts that it is a registered, domestic limited liability company in good standing in the Commonwealth of Virginia, and is not currently conducting business in Vermont.¹⁶

Discussion

29. While the Commission strongly supports the continued development and utilization of energy resources, and believes in making every reasonable effort to provide project proponents with the time to complete necessary business and regulatory transactions, in this case there appears to be no reasonable prospect that the sales transaction will ever be completed. Commission staff has granted North Hartland nine extensions of time, and a period of more than four years, to satisfy the requirements of the order approving the transfer. It is clear from the record that there are significant, possibly insurmountable, disagreements among the parties to the sale, and between North Hartland and the Vermont regulators. We do not think it is in the public interest to allow this proceeding to go on indefinitely, and we therefore deny the extension request and rescind the order approving the transfer.¹⁷

30. We note here that the record of the transfer and related matters is lengthy and complex, involving a number of separate, hotly-contested proceedings, replete with highly personal and antagonistic pleadings, that have resulted in a great expenditure of time and effort, with no tangible results to this point. Notwithstanding the difficult nature of these matters, the Commission has made every effort to resolve all matters brought before it in a timely fashion, and consistent with the public interest.

31. As a separate matter, the commenters here have raised serious issues about the North Hartland’s legal status. The information in the record clearly indicates that North Hartland is no longer a New Hampshire limited liability company, and that it is no longer authorized to do business in Vermont. North Hartland does not deny this, but rather states that it is now registered in Virginia.

¹⁵ North Hartland answer at 4.

¹⁶ *Id.* at 4-5.

¹⁷ *See, e.g., Christine Falls Corporation*, 54 FERC ¶ 61,241 (1991) (rescinding transfer order for failure to file conveyance documents after three extensions of time).

32. A mere name change of a licensee requires only notification to the Commission, and not formal Commission approval.¹⁸ Where, however, a transaction results in a new legal entity holding a license (or, as here, approval for a license transfer), prior Commission approval is required.¹⁹ In this instance, the Commission approved the transfer of the project license to North Hartland, LLC, a New Hampshire limited liability company. The record shows that that entity no longer exists. While there may now be a Virginia limited liability company of the same name and with the same principal, it appears to be a different legal entity, organized at a later time. In the absence of a showing that the New Hampshire and Virginia companies are the same legal entity, we conclude that the entity to which we authorized transfer of the project license no longer exists, and that we have not authorized transfer of the rights it held to another. The transfer order is thus void.

33. With respect to Vermont DPS's and Central Vermont's motions to intervene, we have previously held that interventions are not appropriate in compliance proceedings involving requests for extensions of time.²⁰ We therefore deny the motions to intervene. All comments that have been filed, however, are in the record of this proceeding and we have given them due consideration.

The Commission orders:

(A) The request for extension filed by North Hartland, LLC on September 21, 2004, is denied.

(B) The motions to intervene filed by Central Vermont Public Service Company on September 23, 2004, and by the Vermont Department of Public Service on September 24, 2004, are denied.

(C) The order approving the transfer of license, issued in these proceedings on June 27, 2000, is rescinded.

¹⁸ See, e.g., *West Virginia Hydro, Inc.*, 40 FERC ¶ 61,360 at n.1 (1987).

¹⁹ See *Great Northern Paper Company*, 50 FERC ¶ 61,163 at 61,474-75 (1990).

²⁰ See *Vermont Electric Generation & Transmission Cooperative, Inc and North Hartland, LLC*, 108 FERC ¶ 61,190 (2004) (rejecting Vermont DPS request for rehearing of June 22, 2004, Order granting extension, and explaining that motions for extension do not give rise to opportunity to intervene); *Bangor Hydro-Electric Company*, 87 FERC ¶ 61,035 (1999).

(D) The license transfer application filed in these proceedings on February 17, 2000, is dismissed.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.